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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,149	07/23/2003	H. Downman McCarty II		8274

25175 7590 07/05/2007
BROOKE SCHUMM III
ONE NORTH CHARLES STREET
SUITE 2450
BALTIMORE, MD 21201

EXAMINER

FLORES SANCHEZ, OMAR

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/625,149

Applicant(s)

MCCARTY ET AL.

Examiner

Omar Flores-Sánchez

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-175 is/are pending in the application.
- 4a) Of the above claim(s) 1-142, 152, 153 and 159-175 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 143-151 and 154-158 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 152, 153 and 159-175 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/27/07.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 155 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is improper to claim a registered mark "Zytel".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 143, 144, 146, 147, 148, 150, 151, 154-157 and 158 are rejected under 35 U.S.C. 102(b) as being anticipated by Jeffery et al. (3,320,986).

Jeffery et al. discloses the invention including:

- Claim 143, 146, 151, 154; a shaft 11 having a striking end and a working end (see col. 1, lines 41-43); and a shaped polymeric material (see col. 1, lines 54-60) to be impacted disposed adjacent to said striking end to avoid direct metal-to-metal contact, said shaped polymeric material having a striking end area (13, 18 and 25) of said polymeric material adjacent to said striking end and an impact end area (10, 14, 24 and 27) to be impacted roughly opposite said striking end area, said shaped polymeric material being of sufficient cross-sectional area for transmitting impact upon the impact end area, of appropriate thickness through said cross-sectional area, and of sufficient modulus to enable greater than sixty-seven per cent impact effectiveness compared to a similar impact tool without said polymeric material disposed adjacent to said striking end (the head of Jeffery et al. is capable of performing the intended use of transmitting impact to enable greater than sixty-seven per cent impact effectiveness (see col. 2, lines 9-15, where the material is able to yield a greater proportion of the force of the blow to be transmitted to the chisel).
- Claim 144, 147; said shaped polymeric material being selected to have the further characteristic of redistributing the sound frequency on impact by a driving force on said impact tool to lower frequency ranges than said impact tool without said shaped polymeric material so that resulting sound and vibration is of lower dB, and less harmful frequency ranges to humans

(the rubber head (see col. 1, lines 54-60) of Jeffery et al. is capable of lowering the frequency ranges).

- Claim 148; the shaped polymeric material being selected from the group of polymeric materials reinforced by fiber or mineral (see col. 1, line 57).
- Claim 150; the shaped polymeric material of Jeffery et al. being shaped so that no edge or surface is presented having a radius of curvature of less than .02 inches.
- Claim 155; a fiber-reinforced nylon (see col. 1, line 57).
- Claim 156; the shaped polymeric material being shaped to extend beyond the cross-sectional area of said impact end area (see Fig. 1-4).
- Claim 157; a grip 21.
- Claim 158; a flange 27 (see Fig. 4).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 145 and 149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeffery et al. in view of Smith (4,497,355).

Art Unit: 3724

Jeffery et al. discloses the invention substantially as claimed except for an included angle from the standard 65-70 degree. However, Smith teaches the use of an included angle of 65 degree for the purpose of assuring the effectiveness of the chisel and prolonging its life. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Jeffery et al. by providing the included angle of 65 degree as taught by Smith in order to obtain a device that assures the effectiveness of the chisel and prolong its life.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jensen et al., Gustavsen, Poling, Cogdill et al., Vasudeva and Cabe are cited to show a related device.

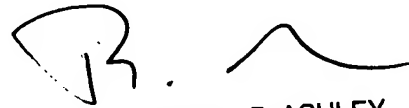
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ofs
6/23/07



BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER